
An Analysis of Pro Se Litigants in
Washington State
1995-2000

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Introduction & Background

Within the past several years, the impact of self-represented (pro se) litigants upon the court system has emerged as a very prominent concern, attracting significant interest at both the state and national level. In Washington State, the Project 2001 Report authored by the Board for Judicial Administration (BJA)¹ recommended that the court system place a high priority upon accessing and meeting the challenges presented by pro se litigants. Nationally, the Conference of State Court Administrators (COSCA) has recently drafted a position paper on this issue.² Both of these documents (particularly the COSCA paper) have suggested that informed policy responses directed towards pro se litigants would greatly benefit from improved data collection and analysis. This paper is an attempt to do just that - namely, using available case-level data to examine pro se trends and characteristics in Washington. All of the results presented here have been derived from data in the Washington State Judicial Information System (JIS).³ While understanding that this system - and the resulting database - poses some inherent limitations for research purposes, we nevertheless believe that some interesting and significant results have emerged which can help courts meet some of the challenges of serving self-represented litigants.

The salient issues/concerns regarding pro se litigants are quite commonly held across the court community. The COSCA position paper succinctly articulates the key issues, with four central themes emerging:

- Pro se litigants require additional court resources and create inefficiencies in case management.
- When dealing with inexperienced pro se litigants, judicial officers face dilemmas in attempting to treat all litigants fairly.
- Real and perceived barriers to self-representation diminish the confidence these litigants place in the court system.
- Pro se litigants place themselves at a disadvantage when they face a courtroom situation (i.e., they are not serving their own interests well).

The task of analyzing each of these concerns with available caseload data ranges from difficult to impossible. Stepping back somewhat, all of these expressed concerns (and others) can be categorized under one of two potential impacts of pro se litigants: (1) the impact upon the litigants themselves (i.e., individual welfare concerns); and (2) the impact upon the court system and its resources (i.e., efficiency, access, & fairness concerns). Certainly some policy responses can address both of these concerns (e.g., pattern forms increase case management efficiency while simultaneously making the process more transparent for litigants - thus allowing them to make more informed choices). However, in some instances it must be recognized that some sort of tradeoff will exist - that improvements in individual welfare may necessitate a decrease in case management efficiency. The manner in which the court weighs this tradeoff will most likely define the emphases and evolution of policies directed towards pro se litigants.

Recent Pro Se Litigant Trends in Washington State

Among the court community there is a widely held view that pro se litigants are becoming much more numerous and onerous, and that this trend - if true - is reaching

crisis proportions. For example, the COSCA position paper states that "The impact of increasing self-representation on the courts - on court management and the administration of justice - cannot be overstated." At other points in this paper the pro se trend is referred to as a "growing crisis"; is represented as a "surge" that is "unprecedented" and "shows no sign of abating". None of these assertions is supportable with Washington State caseload data from 1995 to 2000. Before delving into our results, a brief background discussion on some data issues is necessary.⁴

Reliable results are contingent upon the quality and consistency of data entered into the Judicial Information System. The only available means for tracking any pro se litigant involvement in a case is through the entry of various pro se 'connection codes' in JIS. Connection codes identify relationships between the individuals involved in a case. If an individual - at any point in the life of a case - chooses to represent himself/herself, then a different set of codes *can be* used to record this choice.⁵ While the use of the 'pro se' codes is strongly encouraged, there is no requirement that any court do so. Hence, across courts, the reported incidence of pro se litigants exhibits significant variation. Furthermore, the use of these codes varies to some degree across case types even within the courts that do use the pro se codes. In short, inconsistent usage of the pro se connection codes reduces our ability to separate variation in pro se litigants that is due to different legal cultures versus variation due to differences in data entry.⁶ Nevertheless, we were able to identify several courts that we felt were providing reliable and consistent data. **A more uniform statewide practice would significantly enhance our ability to identify both statewide and individual court pro se trends.**

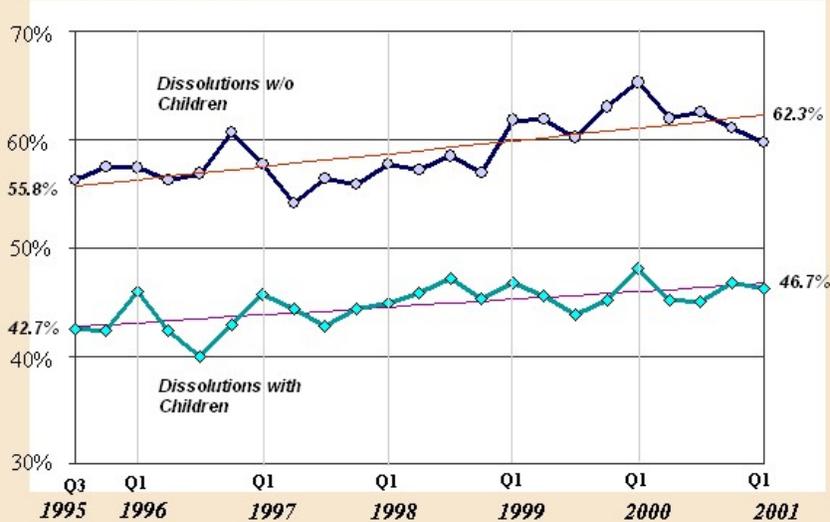
We begin by examining evidence from the aggregated court level caseload statistics from 1995 to 2000. At this level, we calculate a percentage of cases, differentiated by cause of action, in which there is any involvement by at least one pro se litigant. We use a very expansive measure⁷ of pro se involvement to calculate this percentage - specifically, if any pro se connection code is ever associated with a case, then that case is considered to have involvement by a pro se litigant. No attempt is made, nor can be made with aggregated data, to determine to what extent the self-represented litigant(s) was(were) involved in the case.⁸

Some results of this exercise are presented in Figure 1 and Table I. Due to inconsistent usage of pro se connection codes both within and across courts we are only able to report trends for a few causes of action. Table I lists caseload percentages for paternity, domestic violence, torts, commercial, and property rights causes from 1995 in which there was any pro se litigant involvement. All of these actions exhibit flat trends over our time period (1995-3rd Quarter to 2001-1st Quarter). Pro se litigant involvement in complex civil litigation such as torts and commercial issues is quite rare, consistent around 2-3%. Property rights issue incidence is also static - around 20%, while paternity and domestic violence cases have very high - yet also static - incidence rates. Among the actions we can track with some degree of confidence, only dissolutions have exhibited a statistically significant (though modest) trend over the past five plus years. Figure 1 plots the pro se incidence among dissolution actions along with a calculated trend line. During our sample period, pro se litigant incidence in dissolutions with children has increased by less than 1% per year on average (42.7% in 1995-Q3 to 46.7% in 2001-Q1); dissolutions without children has a slightly higher trend (55.8% in 1995-Q3 to 62.3% in 2001-Q1).

Washington State Pro Se Participation Trends, 1995-2001

By Selected Causes of Action Source: JIS

Figure 1: Dissolution Trends, 1995-2001



Courts: Asotin, Benton, Clallam, Ferry, Grant, Grays Harbor, Island, Kitsap, Klickitat, Pend Oreille, San Juan, Skamania, Snohomish, Spokane, Stevens, Thurston, Whatcom

1995 Q3 through 2001 Q1

Table I: Other Case Type Trends, 1995-2001

Cause of Action	Pro Se Participation Trend, 1995-2001	List of Courts
Paternity	Flat, around 80%	Benton, Clark, Grant, Mason, Snohomish, Thurston, Yakima
Domestic Violence Petitions	Flat, around 95%	Asotin, Benton, Clallam, Clark, Grant, Island, Kitsap, Mason, Okanogan, Pend Oreille, Skamania, Snohomish, Spokane, Stevens, Thurston, Whatcom, Yakima
Torts & Commercial	Flat, around 2-3%	Benton, Clark, Cowlitz, Kitsap, Mason, Pierce, Snohomish, Spokane, Thurston, Yakima
Property Rights	Flat, around 19-20%	Benton, Chelan, Clallam, Clark, Cowlitz, Grays Harbor, Island, Kitsap, Mason, Pierce, Snohomish, Spokane, Thurston

Other causes of action either have minimal pro se involvement (e.g., all criminal actions) or exhibit filing magnitudes that are too small to allow us to discern any significant trend. The general picture that emerges, however, is one of very stable to modestly increasing trends in self-representation. Although we used a very expansive measure of pro se involvement, in no cause of action could we find any trend that could be characterized as

either unprecedented or alarmingly steep. Additionally, the incidence of pro se litigants by cause of action suggests that litigants do have an understanding of issues that, on average, require outside counsel (e.g., commercial) versus those that most often do not require such services (e.g., domestic violence petitions).⁹ A deeper understanding of pro se involvement - and its impact upon the court - requires a more detailed analysis with less aggregated data. In the next section we examine dissolution causes of actions, using case-level data, in an attempt to measure the degree to which pro se litigants draw upon court resources.

Who are Pro Se Litigants?

A fundamental problem with using aggregated caseload data to examine the impact of pro se litigants on the court system is that we are unable to identify key attributes that affect the choices made by litigants. For policy response purposes, it is essential to attempt to identify relevant characteristics of the target population. Therefore, as a first step, we want to see how (if at all) pro se litigants differ from litigants who choose to hire professional attorneys to represent them.

In selecting an action for a more detailed study of pro se litigants, dissolution is the obvious choice. Dissolutions represent a significant portion of the caseload; exhibit a well-balanced mix of both pro se and attorney-represented litigants; contain significant individual variation among case characteristics; and demand a sizeable time commitment from any potential pro se litigant. Additionally, the pro se litigants in these actions are considered to be the most 'heavy' users of the limited court resources devoted to assisting pro se litigants. Finally, recording of pro se involvement in these actions is quite good in many courts, making data verification feasible with a high degree of confidence.

Our sample of dissolution cases was drawn from cases resolved between January 1, 2000 and March 31, 2001. We drew from courts of various size across the state; our main criterion being the accurate use of the pro se connection codes. Cases are classified by 'joint representation', i.e., by the match of the choice of representation made by each of the two parties. For any individual there are effectively three options for representation: (1) hire an attorney, (2) self-representation (pro se), (3) no representation. In practice, this choice set distills to six possible joint classifications, given that in practice the petitioner never exercises option three. The six possible classifications are listed below along with our sample weights:

'Joint Representation' Classification Scheme:

Petitioner	Respondent	Dissolutions w/o Children	Dissolutions w/ Children
Attorney	Attorney	13.8 %	25.6 %
Attorney	Pro Se	7.1 %	5.7 %
Attorney	No Representation	14.1 %	14.2 %
Pro Se	Attorney	0.9 %	1.3 %
Pro Se	Pro Se	35.6 %	19.7 %
Pro Se	No Representation	16.4 %	10.4 %
--- Not Classified ---		12.1 %	23.0 %
<i>Sample Totals</i>		<i>4731</i>	<i>4831</i>

The 'Not Classified' category contains cases where either: (1) at least one party makes a transition (e.g. hires an attorney initially but finishes the case as a pro se litigant); or (2) the connection codes are internally contradictory, making it impossible to ascertain the true nature of the choice.¹⁰

The above classification scheme is useful for our purpose of estimating the impact of pro se litigants, however, some caution is required when interpreting results. Key factors that pertain to an individual's circumstances will be reflected in their choice of representation, yet we often do not observe these underlying factors. In other words, individuals self-select, and self-selection is a common problem in social science analysis in that we observe the *ex post choice*, but often not the *a priori factors* that influenced their choice. This can lead to interpretation issues when the characteristics of individuals in each group are quite different.

The two characteristics which would lead the list of 'most important factors' underlying the choice of representation are case complexity and a litigant's income. Does an individual choose self-representation because he/she believes their case is not complex, and thus attorney fees are not justified, or is it because he/she cannot afford an attorney irrespective of case complexity? While the latter explanation is certainly true for some cases, the evidence from both our sample and from an earlier empirical study does not support the view that the *typical* pro se litigant in a dissolution action is unable to afford professional legal services.

Table II: Family Income Averages - by Joint Representation Classification Scheme

Cause of Action	Case Classification by Joint Representation	Percentage of Sample with a Successful Filing Date Address Match	Average of 1990 Median Family Income - by Census Block Level
Dissolutions with Children	Both Litigants Self-Represented	75.3%	\$34,800
	Pro Se Petitioner	77.5%	\$30,100
	Attorney for Petitioner & Pro Se Respondent	77.7%	\$35,800
	Attorney for Petitioner	74.4%	\$34,600
	Pro Se Petitioner & Attorney for Respondent	75.4%	\$30,400
	Both Litigants with Attorneys	72.1%	\$35,500
	Not Classified	62.9%	\$36,100
	All Classifications	71.9%	\$34,700
Dissolutions without Children	Both Litigants Self-Represented	50.9%	\$36,500
	Both Litigants with Attorneys	20.5%	\$34,900

Table Example: In our sample of 4832 Dissolution with children cases, we were able to classify 954 of them as 'Both Litigants Self-Represented'. Of these 954 cases, 75.3% (or 718) cases had at least one address at filing that we were able to match to a US Census block. Once a case was matched, we assigned the block-level median family income as reported in the 1990 US Census to that case. The average of \$34,800 represents the average of the median family income match for all 718 cases classified as 'Both Litigants Self-Represented'.

Our evidence is displayed in Table II.¹¹ Using our above classification scheme, we mapped address information with U.S. Census data to obtain some indicator of income for

individuals in our sample.¹² We matched a litigant's address - at filing - to the 1989 median income of the Census block containing that address. Table II suggests that a small income differential exists only when the petitioner is self-represented and the respondent is absent.¹³ When two pro se litigants are present, any income differential between these litigants and those with an attorney is nonexistent. While it might be assumed that family income medians would not differ significantly across Census blocks, this measure in fact exhibits a significant spread (ranging from \$4999 to \$87,739 in our sample). If pro se litigants were coming mainly from low-income households then we should see differences among the classification groups in Table II. Instead we observe quite similar demographics. The percentage of our sample in which we were able to match a filing address to the Census data was remarkably consistent across our classification groups - around 75%. In Table III we see that the percentage of litigants who lived outside of the state or resided out of the county where the case was filed is also quite consistent across our groups, with some difference for classifications where the respondent has an attorney.

Table III: Out of State and County Residency - by Joint Representation Classification Scheme

Cause of Action	Case Classification by Joint Representation	(%) Out of State		(%) Out of County	
		Petitioner	Respondent	Petitioner	Respondent
Dissolutions with Children	Both Litigants Self-Represented	1.4%	7.1%	8.9%	15.2%
	Pro Se Petitioner	0.6%	8.2%	8.0%	13.3%
	Attorney for Petitioner & Pro Se Respondent	0.4%	8.0%	6.1%	14.0%
	Attorney for Petitioner	2.2%	7.7%	7.3%	13.3%
	Pro Se Petitioner & Attorney for Respondent	0.0%	3.3%	5.5%	22.6%
	Both Litigants with Attorneys	1.6%	4.9%	6.3%	9.6%
	Not Classified	0.9%	4.4%	10.1%	13.8%
	All Classifications	1.3%	6.2%	8.0%	13.0%
Dissolutions without Children	Both Litigants Self-Represented	0.7%	11.4%	8.0%	18.2%
	Both Litigants with Attorneys	0.0%	1.9%	6.3%	7.3%

Table Example: In our sample of 4832 Dissolution with children cases, we were able to classify 954 of them as 'Both Litigants Self-Represented'. Of these 954 cases, 1.4% (or 13) cases had a petitioner who resided out of Washington.

A 1993 ABA-funded study of dissolution cases from Maricopa County in Arizona has some very interesting results.¹⁴ This study, collected a significantly expanded set of measures than is possible with JIS, however, the authors' analysis was limited by the small sample size. Nevertheless they found that pro se litigants had fairly high levels of educational attainment¹⁵ and that the 'passive' participation of the respondent is not at all uncommon.¹⁶ Their conclusions with respect to any income differential are inconsistent. While they state that low income individuals are more likely to self-represent, they also offer the following:

"What is particularly interesting is that people from households whose annual incomes are as much as \$50,000 per year are still significantly more likely to self-represent. Given that the median income for American households is \$30,853, it is clear that self-representation is likely to become a major innovation in American jurisprudence in the coming decades."¹⁷

Note that the income figures cited are in 1990 dollars. Therefore, based upon our findings and those of the earlier study, our analysis will proceed without directly controlling for income, although we will return to the affordability issue in the concluding section.

Pro Se Involvement in Dissolutions, Year 2000

First we want to examine differences in the use of various proceedings in order to address the issue of court resource usage. We do not have duration times for these proceedings so we are only able to document incidence and not the intensity of usage. Table IV presents the likelihood of an event occurring in a typical case, broken down by our classification scheme.¹⁸ Before discussing the results in Table IV, some remarks about case characteristics are necessary.

Table IV: Event Occurrence Rates

Cause of Action	Case Classification by Joint Representation	Settlement Conference	+ Non-Jury Trial	Motion Hearing	Ex parte Action with Order	Continuance	Order Forma Pauperis	Temporary Parenting Plan
Dissolutions with Children	Both Litigants Pro Se	1.7%	2.1%	37.3%	30.7%	1.5%	26.1%	4.3%
	Pro Se Petitioner Only	3.0%	3.0%	62.9%	24.3%	1.8%	42.2%	6.4%
	Attorney for Petitioner & Pro Se Respondent	0.5%	19.4%	33.2%	40.3%	5.2%	1.9%	26.1%
	Attorney for Petitioner Only	2.0%	9.0%	48.0%	31.0%	11.6%	5.6%	31.8%
	Pro Se Petitioner & Attorney for Respondent	7.1%	21.4%	61.9%	31.0%	31.0%	38.1%	38.1%
	Attorneys for both Litigants	4.5%	41.9%	74.7%	45.6%	35.6%	4.0%	51.8%
Dissolutions without Children	Both Litigants Pro Se	0.4%	1.0%	23.4%	11.0%	0.1%	12.2%	n.a.
	Pro Se Petitioner Only	2.1%	0.7%	48.0%	14.9%	0.9%	24.2%	n.a.
	Attorney for Petitioner & Pro Se Respondent	2.3%	7.7%	14.6%	17.2%	3.1%	1.9%	n.a.
	Attorney for Petitioner Only	1.1%	4.9%	30.9%	21.1%	4.0%	1.3%	n.a.
	Pro Se Petitioner & Attorney for Respondent	7.1%	32.1%	42.9%	21.4%	10.7%	17.9%	n.a.
	Attorneys for both Litigants	4.3%	40.1%	57.7%	39.9%	24.3%	1.6%	n.a.

+ - Note: 'Non-jury trial' is a docket code that will in some courts capture a few events other than actual trials.

Assuming for the moment that all litigants have the necessary financial resources to hire an attorney, we can make some general predictions about the patterns we are likely to observe across our classification groups. Specifically, we would expect cases handled by attorneys to be more likely to trigger certain courtroom events or proceedings. The

reasoning is straightforward. As is true for any service, there are two incentives working which lead individuals to hire a professional in lieu of taking the 'do-it-yourself' route, namely that individuals wish to (1) achieve a better outcome by hiring experience, and (2) avoid the (mainly time) cost involved in doing it yourself. Both of these incentives will only strengthen as the issues involved in a case become more numerous, complex, and/or contentious. Since these cases will also require more courtroom time we should naturally expect to see a correlation between attorney involvement and court resource usage.

The results in Table IV certainly suggest that this is true. A temporary parenting plan - potentially a good proxy for case complexity when children are involved - is much more likely to occur when attorneys are involved. Additionally, for dissolutions with children, the probability of a trial increases twenty-fold when two attorneys are involved versus cases where both litigants are pro se. This difference is even greater when the dissolution involves no children. While it is problematic to compare dissolutions with children to those without children (e.g., the absence of the court's criterion to act in the best interest of the children in the latter seriously impairs any comparison between the two actions) a comparison is useful in further highlighting the self-selection issue. The incidence of non-jury trials in dissolutions with children is on average much higher than in dissolutions without children. This is also true in our sample with one exception - attorneys on both sides.¹⁹ How might this be explained? Removing children from the dissolution removes a key layer of complexity from the case. This is likely to provide a greater incentive for pro se litigants in dissolutions without children (which the trends in Figure 1 and the sample weights support). And so the cases remaining with litigants who choose to hire attorneys are increasingly likely to be those that are highly contentious and/or complex. The similar trial rate among the two causes is most likely a reflection of the higher 'pro se to attorney' threshold in dissolutions without children versus those with children.

A few more notes regarding Table IV. As might be expected, pro se litigants are more likely to qualify for financial waivers than litigants with attorneys, again suggesting differing litigant characteristics among the various classifications. The continuance rate increase with attorney involvement is likely due to a combination of a couple of factors: (1) an escalation of scheduling conflicts as more players become involved in the action, (2) strategic motives. Ideally, for policy purposes, we would like to differentiate these two factors, although for now we leave that to future research efforts. In the main, the picture that emerges from Table IV is certainly not one of high court resource usage by pro se litigants. While the inexperience of these litigants may prolong a proceeding, it isn't much of an issue if their cases involve few proceedings.

As an additional measure, we have calculated time from filing-to-resolution (net of suspended time), again, broken down by our classification scheme. This measure only indirectly points to court resource usage. Hence any policy implications drawn from the case-level results must account for this fact. It will - like the occurrence rates in Table IV - to some degree reflect differing case/litigant characteristics. It also, over time, will reflect the degree to which any policy changes alter the incentives (if at all) over the choice of representation. For example, with the increasing availability of pattern forms and court house facilitators, we might expect to observe more of the cases traditionally involving attorneys 'migrating' to a pro se status. Any migration, however, would not be random. Those cases remaining with attorneys would tend to be the more time-consuming and complex cases, again showing up in a longer filing-to-resolution time for cases involving attorneys. This could further increase the incentive for litigants - at the margin - to self-represent.

Filing-to-resolution time will only capture the speed with which a case moves through the court system but not the intensity of resource utilization while in the system. There is, nevertheless, some relationship between the two (speed and usage) and attempts to impact one can have feedback effects into the other. For example, a court may perceive that pro se litigants take longer in proceedings and so will expand the 'pro se calendar' and reduce the 'attorney calendar'. Given the difficulty of scheduling when attorneys are involved, this could lead courts to schedule longer periods between proceedings in which attorneys are involved. Under such a scenario, over time, we could observe an increase in filing-to-resolution times for cases in which attorneys are involved and a decrease for those with pro se litigants. It would of course be wrong to interpret this as pro se litigants becoming 'more efficient' relative to attorneys. Rather, the institutional response has altered the court resources available pro se litigants relative to attorney represented litigants.²⁰

Filing-to-resolution results are presented in the Figures 2.A and 2.B on page 10. The number placed on each bar represents the average number of days from filing to resolution for that classification. The percentages in parentheses on the bar represent sample weights. For dissolutions without children, a typical case involving a Pro Se litigant can be expected to resolve within a month of the end of the mandatory 90 day cooling-off period, whereas the cases involving two attorneys require, on average, an additional 170 days. When dissolutions involve children, the time to resolution naturally increases, although when Pro Se litigants are involved, the additional time amounts to no more than around one month.

Returning to the issue of differing case complexity, we have created a revised classification scheme in an attempt to somewhat correct for this. Specifically, in the revised scheme, any case - regardless of the litigants involved - that was resolved after a trial is now placed into the 'Not Classified' category. This should remove some of the most highly contentious cases. Another correction accounts for the fact that litigants with attorneys can experience a change of an attorney, whereas this cannot happen with pro se litigants. A new attorney will have to come up to speed on the case, thus possibly causing a delay. Attorney changes are not differentiated in our original classification. In our revised scheme, those who change an attorney (note, the choice of representation is not changed - just the representative) are also placed into the 'Not Classified' category. Thus, any classification with an attorney now signifies litigants with the same attorney through the life of the case. Figures 3.A and 3.B on page 11 repeat the filing-to-resolution exercise under this revised classification. Although the differences between Figures 2 and 3 are aligned with our expectations, the basic pattern evidenced in the original classification scheme nevertheless remains the same.

Given the increase in pro se litigants since 1995, it would be informative to repeat the filing-to-resolution calculations for cases that resolved in 1995. Unfortunately, due to archiving requirements in JIS, capturing this data is rather difficult - with one exception. Namely, Spokane Superior Court does not archive cases in JIS. Thus for this one court we can examine similar groupings in 1995 versus 2000. Note however that the types of cases involving attorneys are not generally comparable over time since the movement of litigants towards self representation over this time period has not been a random process (recall the selection discussion above). Nevertheless, the filing-to-resolution times for Spokane provide some interesting results (see Figures 4.A through 5.B on pages 12 and 13). The amount of time it takes to resolve cases involving two pro se litigants has fallen,

on average, by around 11%-12% (for dissolutions both with and without children), whereas those involving two attorneys have risen by around 15% (dissolutions with children) to 13% (dissolutions without children). The decrease in time for Pro Se litigants is most likely due to the introduction of the pattern forms and facilitators. For the attorneys, the non-random migration of cases, along with increasing demands upon the court calendar are the most likely explanations.

FIGURE 2.A: Average Length in Days, Filing to Resolution - Dissolutions with Children (DIC)
Cases Resolved from 1/1/2000 thru 3/30/2001

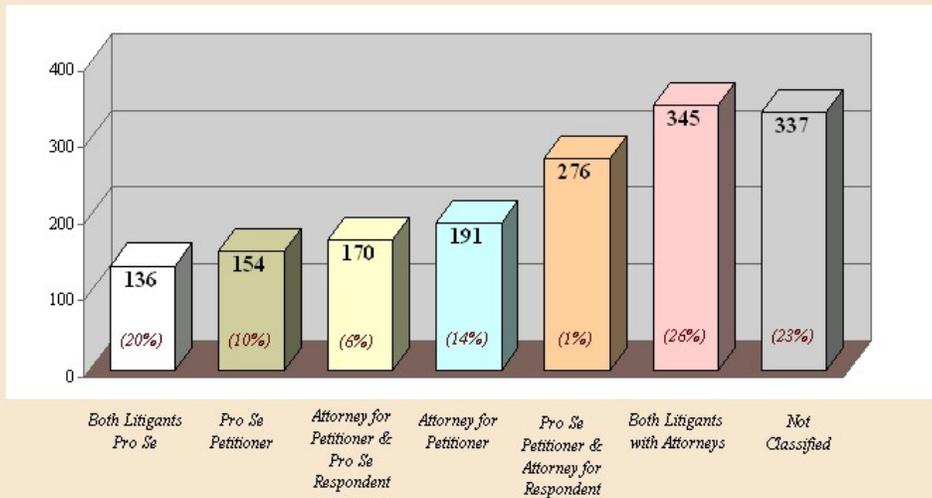


FIGURE 2.B: Average Length in Days, Filing to Resolution - Dissolutions without Children (DIN)
Cases Resolved from 1/1/2000 thru 3/30/2001

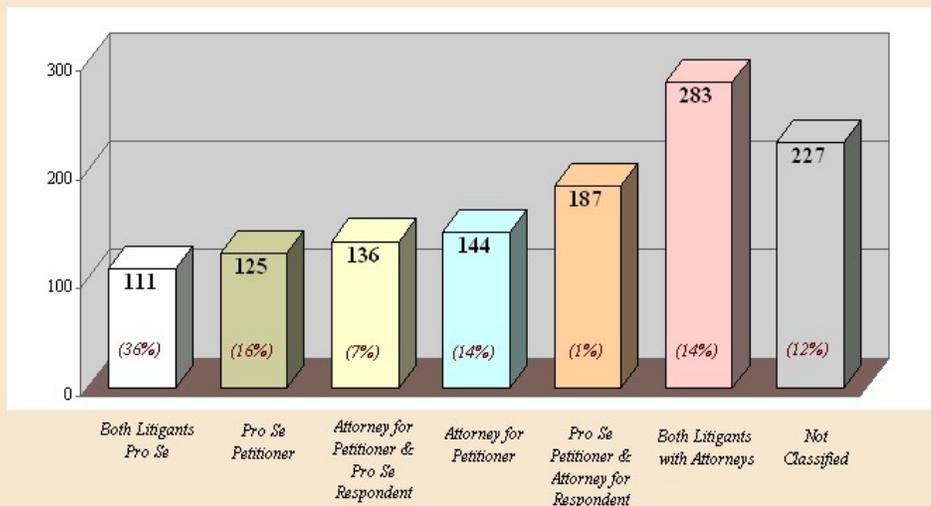


FIGURE 3.A: Average Length in Days, Filing to Resolution - Dissolutions with Children (DIC)
Cases Resolved from 1/1/2000 thru 3/3/02001

Revised classification scheme (see text for description)

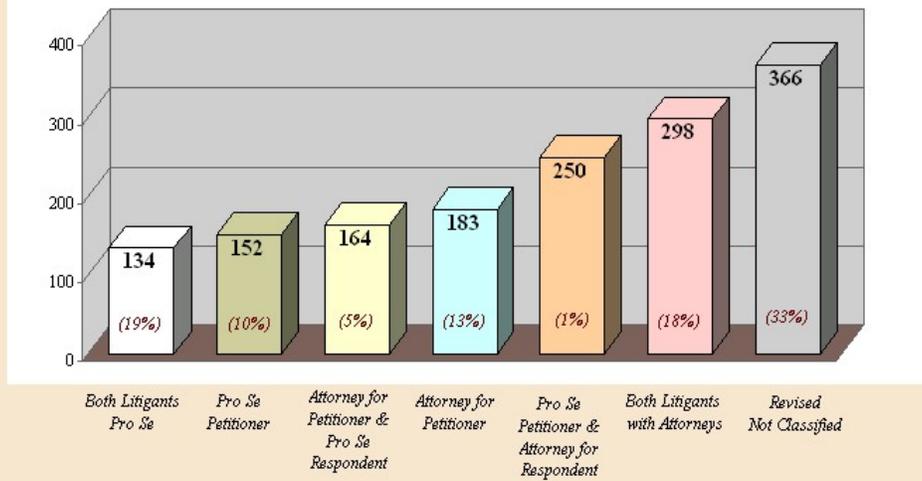


FIGURE 3.B: Average Length in Days, Filing to Resolution - Dissolutions without Children (DIN)
Cases Resolved from 1/1/2000 thru 3/3/02001

Revised classification scheme (see text for description)

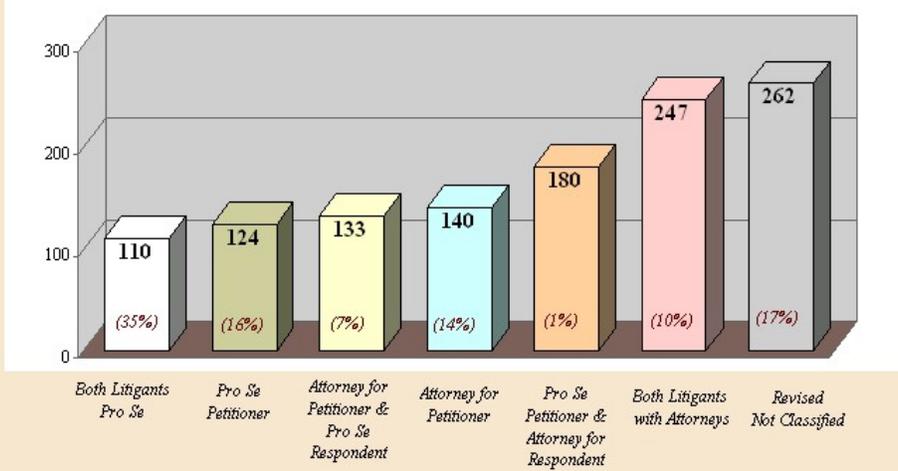


FIGURE 4.A: Average Length in Days, Filing to Resolution - Dissolutions with Children (DIC)
 Spokane Superior Court: Years 1995 & 2000

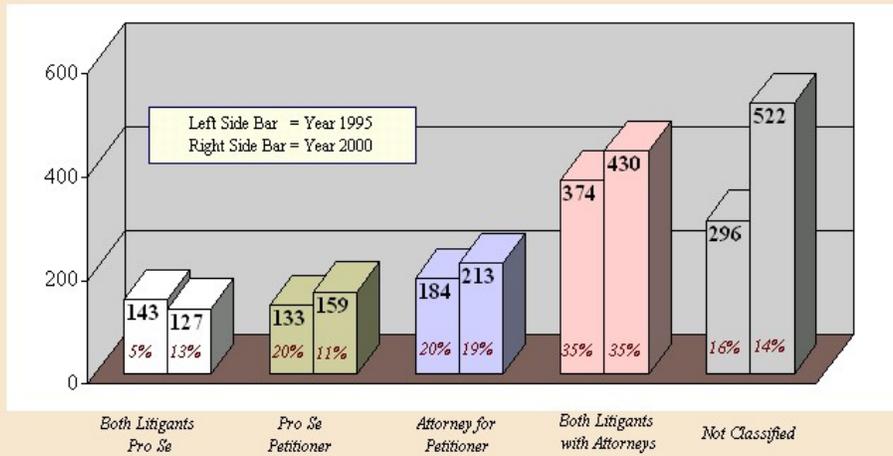


FIGURE 4.B: Average Length in Days, Filing to Resolution - Dissolutions without Children (DIN)
 Spokane Superior Court: Years 1995 & 2000

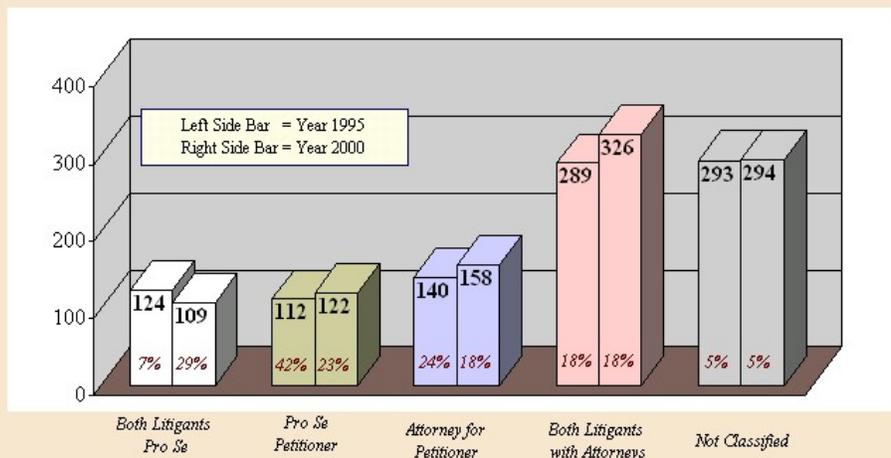


FIGURE 5.A: Average Length in Days, Filing to Resolution - Dissolutions with Children (DIC)
 Spokane Superior Court: Years 1995 & 2000

Revised classification scheme (see text for description)

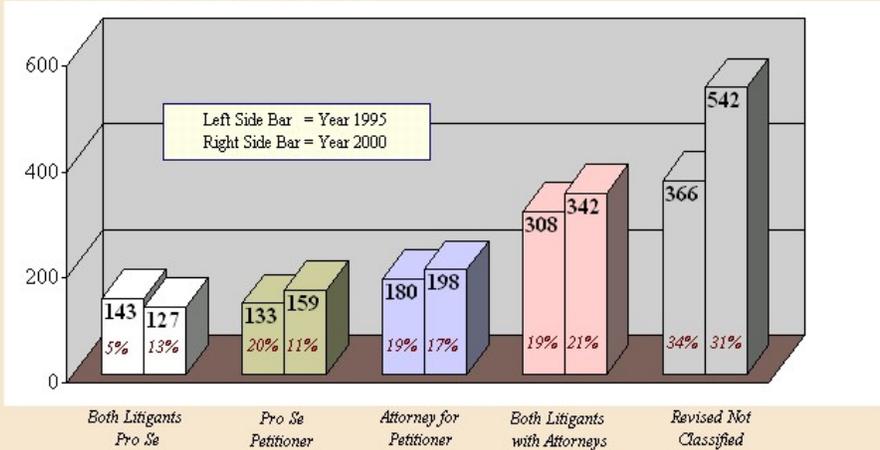
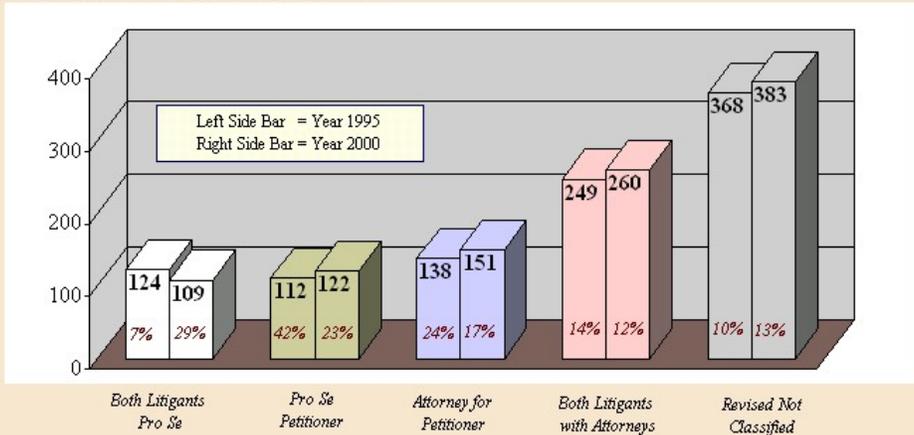


FIGURE 5.B: Average Length in Days, Filing to Resolution - Dissolutions without Children (DIN)
 Spokane Superior Court: Years 1995 & 2000

Revised classification scheme (see text for description)



Conclusions

Our conclusions are centered on two issues. First, with respect to the empirical evidence of pro se litigants, there is simply no evidence to support the beliefs that the trends in pro se litigation are reaching crisis proportions. The trends are either quite modest or in most cases flat. Furthermore, breaking down the incidence of pro se litigants by cause of action

reveals that litigants have an understanding of which actions require hired expertise. In other words, the choices and trends reveal that litigants are informed and that their choices are rational and consistent over time - with one caveat. The caveat is that for low-income litigants, the economic factor may constrain the choice such that self-representation appears as the only possible option. Accepting this conclusion then leads to the second concluding issue - how might this be used?

An alternative view of this issue is to interpret pro se trends as signals. The flat trends exhibited by the data support this interpretation. In terms of the welfare of the individual, if 80% of litigants in a particular type of action are choosing self-representation, then this incidence rate suggests simply that for a typical case of this type, the litigants feel that their best choice is self-representation. In other words, they understand both (1) that they must undertake a time and educational commitment, and (2) that the experience of an attorney would be helpful, yet weighed against the cost of hiring an attorney they have chosen to undertake the commitment and forego the experience of an attorney. Accepting this view of pro se litigants as a signal, then, the appropriate policy response would be to identify actions with high pro se rates (domestic violence, paternity, dissolutions without children), and once identified, concentrate more efforts to assist pro se litigants in these causes. Furthermore, this would help facilitate a process that might provide a further advantage to the court - namely, a sorting mechanism.

If one alternative view of pro se litigants is that of a signal, another alternative view is that choice of representation provides a sorting mechanism that can benefit both the court and litigants. Returning to the selection issues discussed above, if the litigation process is more transparent then individuals will be able to make more informed choices as to whether or not they should hire an attorney. Using dissolutions without children as an example, consider the evidence from Spokane since 1995 in light of the changes that have taken place over this time. Since 1995 the availability of pattern forms and Internet resources have increased the transparency of the dissolution process, while simultaneously reducing the cost of self-representation. Predictably, we see a migration towards more pro se litigants. While there was a significant increase in the number of cases with two pro se litigants, the filing-to-resolution time actually fell for this group while all others increased. There are two conclusions we could draw from this. First, the decrease in time is likely at least partly due to pattern forms and the Internet, i.e., pro se litigants are more efficient due to these resources. The second - and perhaps more interesting conclusion - is that the benefit of pattern forms and the Internet is really in making the process more understandable, which lead to litigants making better choices that ultimately benefited the court. Pro se litigants are not 'heavy users' of court resources at the *extensive* margin (they may be at the intensive margin but we can't address that without proceeding duration data).

Developing a more streamlined and transparent process can also assist the court in better targeting court resources devoted to pro se litigants (such as courthouse facilitators) towards those pro se litigants most in need of services. In order to develop this idea return to our two key factors in the representation decision: income and case complexity. Considering the value of one's time, individuals at the high end of the income distribution should hire an attorney no matter how simple or complex their case. We need not worry these individuals failing to do so. As we move down the income spectrum, the complexity of the case should be the key factor in the representation decision.

Consider first those litigants who can afford to hire an attorney. By making the process more streamlined and transparent, a court will be allowing individuals to make more informed - and better - choices over representation. If a litigant can afford an attorney, but chooses not to, then they are likely to do so regardless of how the court process and resources are structured. Making the process more streamlined will reduce the number of these individuals who require court personnel assistance. In such a situation, the courthouse facilitator will be able to better address the individual needs of those who do seek his/her assistance. He/she should increasingly see pro se litigants who are having trouble navigating the court system because they either don't understand it or they have many issues (e.g., domestic violence) associated with their action.

Finally, consider litigants at the bottom of the income distribution. Here income again will dominate, even though some of these individuals may have non-complex cases. Courthouse facilitators could concentrate more of their time in assisting these low-income and multiple issue litigants; suggesting programs, etc. As the results in Tables II and IV suggest, a pro se petitioner with a 'passive', or unrepresented, spouse is a somewhat better indicator of low income than mere pro se status. The presence of a single pro se petitioner should signal a more involved response by the courthouse facilitator than in cases with two active pro se litigants.

The image of the inexperience of a pro se litigant creating dilemmas and frustrations during a trial or hearing has a basis in reality. However, the data suggest that this picture is not the norm. The result that: (1) cases involving two pro se litigants generally have the lowest occurrence rates for most courtroom events, and (2) the filing-to-resolution time of this group is consistently the shortest, most likely signals that these individuals have resolved all of their issues prior to their arrival in court. To add credence to this argument we looked at the percentage of cases in which a joinder was recorded in the docket on the same date as the filing of the petition for dissolution. The results, presented in Table V below, provide significant evidence that when a case has two active pro se litigants, the majority of these litigants - in dissolutions either with or without children - have resolved their differences at filing.

Table V: Percentage of Cases with a Joinder Attached to the Dissolution Petition

Case Representation	Dissolution with Children	Dissolution without Children
Both Litigants Pro Se	66.8%	71.2%
Pro Se Petitioner Only	26.2%	29.2%
Attorney for Petitioner & Pro Se Respondent	35.6%	38.1%
Attorney for Petitioner Only	5.9%	9.4%
Pro Se Petitioner & Attorney for Respondent	2.1%	13.3%
Attorneys for both Litigants	0.4%	0.2%

What we are suggesting is that by breaking down barriers to pro se litigation, courts will be facilitating more optimal self-selection that - while seeing an increase in more pro se litigants - will nevertheless decrease the use of court resources by these individuals than if they had hired an attorney. Another issue of concern is that pro se litigants are at a disadvantage once in the courtroom, and more so if the other party has hired an attorney. While this is undoubtedly true, it is only an issue if a pro se litigant faces such

a situation, and the data reveal that these situations are rare. Instead, most often the litigants' representation choices are the same, or the respondent is a passive player. The desire to avoid a costly legal battle may act as an effective incentive for both parties to settle their differences prior to reaching the courtroom. In other words, it can act as an indirect means of alternative dispute resolution for those cases most likely to benefit from it.

¹ See particularly pp 26-27 of: '*Project 2001 - Final recommendations as reported to the Legislature*', Board for Judicial Administration, Jan. 2001, Olympia, Washington.
<http://www.courts.wa.gov/projects/proj2001/finaltoleg.pdf>

² '*Position Paper on Self-Represented Litigation*', Conference of State Court Administrators, August, 2000, Arlington, Virginia.
<http://cosca.ncsc.dni.us/selfreplitigation.pdf>

³ The JIS system is designed as a case management and tracking tool for court administrators, staff, and judges. Given that recording practices will vary across both time and individual courts, it is at times difficult to obtain consistent data series.

⁴ For more detail on data issues and estimation procedures, see the technical appendix.

⁵ The 'pro se' connection codes were made available in JIS in October 1994.

⁶ For example, five courts do not use the pro se codes at all. Others will use them in some case types but not others. Yet others have used them sporadically across all case types.

⁷ As noted above, some courts do not use the pro se codes or use them inconsistently. If there was any question regarding data reliability then the court in question will not be included in our figures.

⁸ For example, if one party makes only a brief appearance on their own behalf, while otherwise hiring an attorney (and all other parties have hired an attorney) the case will be 'flagged' as one involving a pro se litigant, and is effectively no different than a case with two pro se litigants throughout the life of the case.

⁹ The only possible exception one could make to this statement is in the area of dissolutions, particularly those involving children. We examine these actions in more detail below.

¹⁰ Example: a litigant is flagged as an active pro se yet also has an active attorney on the case. We also eliminated suspect and extreme observations by removing cases that resolved prior to the mandatory 90 day cooling-off period and cases that were six years old or greater at resolution.

¹¹ Note that Table II contains complete results only for dissolutions with children - the JIS system does not require inputting of litigant address information for dissolutions without children and so our sample of these actions is incomplete.

¹² We used 1990 US Census data down to the block level.

¹³ This is also true for classifications where the petitioner is pro se and the respondent has an attorney, but these cases are quite unusual and our sample size is too small to make this inference.

¹⁴ See *"Is Self-Representation a Reasonable Alternative to Attorney Representation in Divorce Cases?"*, Sales, Beck, and Haan, Saint Louis University Law Journal, Spring 1993.

¹⁵ Ibid. "To better understand the educational level of those who are most likely to self-represent, we partitioned education into three levels (high school or below, college up to bachelor degree, and post-graduate education). The analysis of the data revealed that although there were significant differences among the three groups, the majority of people who seek to self-represent are reasonably educated. Indeed, the most common education level for litigants who self-represent was 1-3 years of college. The reason for this finding is that it is the litigants with some graduate training or beyond that are fundamentally different from the other litigants. It is this highest educated group that is the most likely to select attorney representation."

¹⁶ Ibid. "There were no significant overall differences between self-represented petitioners and respondents in their reasons for selecting self-representation, although there was one specific difference -- the respondents' listing of "other" reasons (i.e., those not provided to them by the interviewer). When we looked at this category, we found that two types of logical responses predominated for the respondents. They were selecting self-representation because their ex-spouses were doing all of the work for them and they trusted their ex-spouses' judgements or they were unaware that a case was pending against them."

¹⁷ Ibid.

¹⁸ We focus mainly on four classifications, where both litigants either have attorneys, both are pro se, and where the respondent has no representation.

¹⁹ It is also an exception for pro se petitioner and attorney for respondent. However, this classification is very rare and so we have a small number issue when drawing inferences from this sample.

²⁰ The growth of this phenomena would be limited and is partly affected by the caseload management practices of the court. Incorporating caseload management practices into future research would be beneficial.